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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/644,294 | 08/20/2003 | John D. Anderson | 0110357-029 | 6658 |

7590 01/07/2005

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Chicago, IL 60690-1135

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| EXAMINER |
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GUTMAN, HILARY L

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| ART UNIT | PAPER NUMBER |
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3612

DATE MAILED: 01/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|--------------------------------------|--|--|
| Office Action Summary | Application No. 10/644,294 | Applicant(s) ANDERSON ET AL. | |
| | Examiner Hilary Gutman | Art Unit 3612 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 7-11, 14, 16 and 18-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-4, 7-11, 14, 16, 18-33, 35-38 and 40-42 is/are allowed.
- 6) ☒ Claim(s) 34 and 39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 November 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>11/1/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings were received on 11/1/04. These drawings are acknowledged by the examiner.

Claim Objections

2. Claim 1 is objected to because of the following informalities: on line 9, "engage" should be "engager". Appropriate correction is required.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fahland in view of Switzer.

For claim 34, Fahland (2,858,905) discloses an auto-rack railroad car supplemental restraint for an auto-rack railroad car having a primary restraint system for a vehicle T, the primary restraint system including a grating (generally 11) and a primary restraint B adapted to be releaseably attached to the grating, the supplemental restraint comprising: a body (Figure 7) adapted to be positioned on the grating (via the primary restraint) between a tire W of the vehicle T on the grating and the primary restraint, the body including a mounting member 31 and a tire engager (or surface 29) extending upward from the mounting member; and an expander 34, 35 connected to the body, the expander movable to a non-expanded position (when 34 engages an uppermost portion of slot 36) and at least one expanded position (when 34 engages a lower portion of slot), wherein the positioning of the expander in the expanded position is adapted to cause the tire engager to engage the tire and the expander to engage the primary restraint.

Fahland lacks the tire engager being formed with a curvature for engaging the tire.

Switzer (4,399,893) teaches a tire engager having a curvature or a generally curved shape to engage the rounded part of a tire.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the tire engager of Fahland with a curvature, as taught by Switzer, in order to provide better engagement between the engager and the tire, since the engager would match the shape of the tire, which is round and inherently has a curvature.

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6. Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fahland in view of Switzer.

For claim 39, Fahland discloses an auto-rack railroad car supplemental restraint for an auto-rack railroad car having a primary restraint system for a vehicle, the primary restraint system including a grating (11) and a primary restraint B adapted to be releaseably attached to the grating, the supplemental restraint comprising: a body (Figure 7) adapted to be positioned on the grating between a tire W of the vehicle T and the primary restraint B, the body including a mounting member 31 and a tire engager 29 extending upwardly from the mounting member; and expanding means 34, 35 for causing the tire engager to engage the tire, the expanding means movable between a non-expanded position and an expanded position (shown in Figure 3), wherein the movement between the non-expanded position and the expanded position is adapted to cause the tire engager to securely engage the tire and the expanding member to engage the primary restraint.

Fahland lacks the tire engager being formed with a curvature for engaging the tire.

Switzer (4,399,893) teaches a tire engager having a curvature or a generally curved shape to engage the rounded part of a tire.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the tire engager of Fahland with a curvature, as taught by Switzer, in order to provide better engagement between the engager and the tire, since the engager would match the shape of the tire, which is round and inherently has a curvature.

Allowable Subject Matter

7. Except for a minor informality in claim 1, claims 1-4, 7-11, 14, 16, 18-33, 35-38, 40-42 are allowed.

Response to Arguments

8. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hilary Gutman whose telephone number is 703-305-0496.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dayoan can be reached on 703-308-3102. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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11. Any response to this action should be mailed to:

Assistant Commissioner for Patents

Washington, D.C. 20231

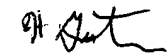
or faxed to:

(703) 872-9326, (for formal communications intended for entry).

or:

(703) 746-3515, (for informal or draft communications, please clearly label

“PROPOSED” or “DRAFT”).



Hilary Gutman
December 22, 2004